No. 75-867

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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

THOMAS E. KEANE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENT TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Supplement to Point III

JEROME H. TORSHEN
11 South LaSalle Street
Chicago, Illinois 60603
312-372-9282

JOHN POWERS CROWLEY
53 West Jackson Blvd.
Chicago, Illinois 60604
Attorneys for Petitioner

SHERMAN C. MAGIDSON
EDWARD G. WIERZBICKI
On the Brief

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581



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On January 5, 1976, after the filing of the Petition for a Writ of Certiorari in this cause, the Court of Appeals for the Seventh Circuit rendered an opinion in *United States of America* v. *Craig, et al.*, a copy of which is reprinted as Appendix hereto.

In that case, the indictment charged, *inter alia*, that certain Illinois state legislators, in violation of the mail fraud statute (18 U.S.C. §1341), had engaged in a scheme to defraud the citizens of Illinois of their "loyal, faithful and honest services in their official positions" and "of their

right to have the legislative business of the state . . . conducted honestly." (Slip, p. 2) One of the legislators answered all questions put to him by postal inspectors, the Assistant United States Attorney and the grand jury concerning his actions as a legislator. Subsequently, he moved to suppress his statements on the ground they were obtained in violation of the federal and state Speech or Debate Clauses. The Court of Appeals stated the primary question to be whether state legislators have a speech or debate privilege, conferred either by the Illinois constitution or as a matter of federal common law, which bars the admission of certain evidence against state legislators in a federal criminal prosecution.

The Court held that such a privilege exists but that it had been waived in the instant case.* In doing so, the Court by illustration voiced precisely the historical reason why federal courts should not become embroiled in fashioning remedies for local criminal conduct. Just as the Seventh Circuit in *Markert* was embarrassed to fashion a federal common law rule involving the Speech and Debate privilege, the Court here should not enforce a federal interpretation of peculiarly local rules.

The Court in considering the existence of the privilege also carefully considered the state's role and its interrelationship with the federal government in cases involving alleged "political corruption." Inherent in the Court's finding is that the role of federal authorities in this area is, properly, limited. This is in accord with traditional

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* The United States attorney has stated in the news media that his office intends to seek review.

notions of federal-state comity. See *Younger* v. *Harris*, 401 U.S. 37, 44. As stated by the Court,

> "Perhaps somewhat idealistically, the Court in *Tenney* v. *Brandhove, supra,* 341 U.S. at 378, stated that legislative abuses were to be corrected by self-discipline and the electorate. Subsequently, in *United States* v. *Brewster, supra,* 408 U.S. at 520, the Court more prudently noted that not only the 'jurisdiction of Congress to punish its Members is not all-embracing,' but also that the power of self-discipline has inherent limits. Here, however, the State of Illinois is under no such disabilities. *While it is within the province of the United States Attorney to prosecute local officials who violate federal law, the primary responsibility for ferreting out their political corruption must rest, until Congress directs otherwise, with the State, the political unit most directly involved.* Federalist No. 17, *supra* at 120." (Emphasis added)

Moreover, as stated by the Seventh Circuit, a statute of general criminal applicability, such as the mail fraud statute, does not authorize the federal courts to regulate the conduct of local governmental officials. No compelling federal interest is served by using such a statute to prescribe the conduct of elected state officials. (Slip, p. 10, f.n.4)

The principles enunciated are applicable to the case at bar. Here, the Federal Government, through the mail fraud statute, seeks to root out corruption allegedly existing in the Chicago City Council.*

In seeking to perform its task, the Federal prosecutorial agencies have intruded into the affairs of the City Council in matters heretofore considered to be essentially local

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* By virtue of Home Rule provisions of the Illinois Constitution of 1970, the City Council of the City of Chicago is, in effect, the "state" legislature for the city. (S.H.A. Const. Art. 7 § 6.)

and governed by local customs, mores, statutes and procedures.

Central to the charge against petitioner that he defrauded the citizens of Chicago and his fellow aldermen of his "loyal, faithful and honest services," was the charge that he had violated a rule of the City Council of the City of Chicago which provided that "every member who shall be present when a question is stated . . . shall vote thereon, unless excused by the Council, or unless he is personally interested in the question, in which case he shall not vote." The trial court directed that the City Council rule served "to define the standard of conduct expected of the defendant . . . by the citizens of Chicago and the defendant's fellow aldermen," (T. 3166-67) even though aldermen who testified concerning the meaning of the rule were, in the circumstances of this case in which the City had no financial interest, divided on the issue. (See Petition, p. 15, T. 2495-2496, 1575, 2579, 2588, 1840, 1338-1339, 1348, 1353, 1751, 1757, 1810, 1846, 1824, 1861-1862).

Thus, the local rule was submitted by a federal prosecutor to a federal judge for further consideration by a federal jury. The federal court not only held petitioner accountable for certain legislative acts, but it also imposed a standard which may have been contrary to the local legislative purpose. As stated in *Craig:*

> ". . . the courts are not deemed the proper place to hold legislators accountable for their acts as elected representatives. *Tenney* v. *Brandhove,* 341 U.S. 367, 378."

In the instant case, the primary responsibility to root out alleged political corruption has been diverted from the state agencies, elected officials have been ignored in

their understanding of their functions, piecemeal consideration has been given to a complicated set of state and local procedures and principles of federal-state comity have been disregarded.

CONCLUSION

For the foregoing reasons, in addition to those heretofore recited in the Petition for Writ of Certiorari, Petitioner respectfully requests that this Court issue its writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

JEROME H. TORSHEN
11 South LaSalle Street
Chicago, Illinois 60603
312-372-9282

JOHN POWERS CROWLEY
53 West Jackson Blvd.
Chicago, Illinois 60604

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